

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

CODY GRAHAM,

Plaintiff,

v.

**Civil Action No. 2:22-cv-00467
Honorable Irene C. Berger**

**JOHNNY WILSON, CO II DAVID EWING,
CORPORAL CHAYSE BROWN, CORPORAL
SNODGRASS, CO I TANNER SEARS,
SERGEANT MICHAEL SHAFFER, LT
MITCHELL, and CORPORAL SETH SUMMERS.**

Defendants.

**MOTION FOR LEAVE TO AMEND
COMPLAINT TO CONFORM TO THE EVIDENCE**

Comes now Plaintiff, by counsel, Stroebel & Stroebel, PLLC and moves this Honorable Court pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure to enter an Order granting plaintiff leave to file an amended complaint. In further support of this Motion, plaintiff states as follows:

1. While Plaintiff believes his complaint adequately addresses the conduct carried out by the Defendants, should the Defendants try to argue that Plaintiff's complaint does not clearly reflect all of the claims brought against the Defendants, Plaintiff moves to Amend his Complaint to conform with the evidence that has been presented through the discovery process and clarify his complaint.

2. Motions to amend should be freely granted under Rule 15(a)(2) when justice so requires. This rule provides liberal practice in allowance of amendments to formal pleadings, Duffield v. Memorial Hosp. Ass'n, 361 F. Supp. 398, 1973 U.S. Dist. LEXIS 12677 (S.D.W.Va. 1973), aff'd, sub nom. Duffield v. Charleston Area Medical Center, 503 F. 2d 512, 1974 U.S. App. LEXIS 6715 (4th Cir. 1974). Wall v. Chesapeake & O.R., Co., 339 F. 2d 434, 1964 U.S. App LEXIS 3673 (4th Cir. 1964).

3. During the course of discovery, Plaintiff obtained evidence that Mr. Graham was never decontaminated following the use of O.C. spray in this incident.

4. Additionally, during the course of discovery, Plaintiff was able to determine the role of each defendant in the use of force that Plaintiff previously described in the Complaint.

5. In order to make Plaintiff's claims and Complaint more clear, Plaintiff requests leave from the Court to amend his complaint to reflect the information that has been discovered during the discovery phase in this matter.

6. Amending the complaint will not prejudice the defendants in any way. The discovery phase revealed information that Mr. Graham was never decontaminated after he was sprayed. The individual defendants further admitted they did not personally decontaminate the plaintiff. The information about the defendants' specific roles during the use of force will not prejudice the defendants either. The information added is sought to help clarify the defendants' roles in this matter as well as the legal claims brought against each defendant by the Plaintiff.

7. Plaintiff has attached a copy of the proposed Amended Complaint hereto as Exhibit A.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter an Order granting plaintiff leave to file an amended complaint, as requested herein.

CODY GRAHAM,
By Counsel

/s/ Paul E. Stroebel

Paul E. Stroebel (WV Bar #13269)
Attorney for Plaintiff
Stroebel & Stroebel, PLLC
405 Capitol Street; Suite 102
P.O. Box 2582
Charleston, WV 25329
Telephone: (304) 346-0197
E-mail: paulstroebel@gmail.com

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CERTIFICATE OF SERVICE

I, Paul E. Stroebel, counsel for the Plaintiffs, hereby certify that a true and correct copy of the foregoing “*Motion for Leave to Amend Complaint to Conform to the Evidence*” has been served upon all counsel of record by electronic service this 26th day of September 2023 to the following:

John P. Fuller, Esquire
Adam K. Strider, Esquire
Bailey & Wyant, PLLC
P.O. Box 3710
Charleston, WV 25337-3710

William E. Murray, Esquire
Bailey & Wyant, PLLC
P.O. Box 3710
Charleston, WV 25337-3710

/s/ Paul E. Stroebel
Paul E. Stroebel (WV Bar #13269)
Attorney for Plaintiff
Stroebel & Stroebel, PLLC
P.O. Box 2582
Charleston, WV 25329
Telephone: (304) 346-0197
Fax: (304) 346-6029
E-mail: paulstroebel1@gmail.com